

REPRESENTATIVE FOR PETITIONERS:

Tony L. Hiles, Vice President and CEO of Von, Inc.

REPRESENTATIVE FOR RESPONDENT:

Julie Newsome, Huntington County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Yvonne C. Hiles & Von, Inc.,)	Petition Nos.: 35-005-11-3-5-82422-15
)	35-005-11-3-5-82423-15
Petitioners,)	
)	Parcel Nos.: 35-05-14-100-177.600-005
)	35-05-14-100-136.400-005
v.)	
)	County: Huntington
)	
Huntington County Assessor,)	Township: Huntington
)	
Respondent.)	Assessment Year: 2011

Appeal from the Final Determination of the
Huntington County Property Tax Assessment Board of Appeals

SEPTEMBER 27, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. Are the Petitioners able to challenge the subject parcels' values or the application of influence factors on Form 133 petitions? And if so, did the Petitioners prove the subject parcels' assessments are incorrect?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2011 assessment appeals of two parcels by filing Petitions for Correction of an Error (Form 133s) with the Huntington County Auditor on May 8, 2015. On October 19, 2015, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioners any relief. On December 4, 2015, the Petitioners filed two Form 133s with the Board.
3. On June 29, 2016, the Board's administrative law judge (ALJ), Jennifer Bippus, held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject parcels.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Mr. Hiles appeared for the Petitioners.¹ Deputy County Assessor Julie Newsome and County Assessor Terry L. Boone appeared for the Respondent. All of them were sworn.

5. The Petitioners offered the following exhibits:

Parcel 35-05-14-100-177.600-005

- | | |
|------------------------|---------------------------------------------------------------------------|
| Petitioners Exhibit 1: | Arial photograph of the "flood zone," |
| Petitioners Exhibit 2: | "Summary of assessments years 2008 -2013," |
| Petitioners Exhibit 3: | Notice of Assessment of Land and Structures (Form 11) dated July 6, 2012. |

Parcel 35-05-14-100-136.400-005

- | | |
|------------------------|-------------------------------------------|
| Petitioners Exhibit 1: | Arial photograph of the "flood zone," |
| Petitioners Exhibit 2: | "Summary of assessments years 2008-2013," |
| Petitioners Exhibit 3: | Form 11 dated July 6, 2012, |
| Petitioners Exhibit 4: | Form 11 dated July 1, 2013. |

6. The Respondent did not offer any exhibits.
7. The following additional items are recognized as part of the record:

- | | |
|------------------|-------------------------------------|
| Board Exhibit A: | Form 133s with attachments, |
| Board Exhibit B: | Hearing notices, dated May 6, 2016, |

¹ Mr. Hiles serves as the Vice President and CEO of Von, Inc.

Board Exhibit C: Hearing sign-in sheet.

8. The properties under appeal are vacant residential lots located on Lindley Street in Huntington.
9. The PTABOA determinations list the following 2011 assessments for the subject parcels:

35-05-14-100-177.600-005

Land: \$6,400 Improvements: \$0 Total: \$6,400

35-05-14-100-136.400-005

Land: \$6,400 Improvements: \$0 Total: \$6,400

10. The Form 133s claim the following 2011 assessments for the subject parcels:

35-05-14-100-177.600-005

Land: \$1,000 Improvements: \$0 Total: \$1,000

35-05-14-100-136.400-005

Land: \$2,000 Improvements: \$0 Total: \$2,000

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

12. While the Petitioners have appealed the assessments of two different parcels, their main contentions about those assessments are generally the same. The Petitioners argue the parcels are located in a "flood zone" and influence factors should be applied due to lack of utility. The Respondent improperly removed negative influence factors and did not allow any adjustments for the location. *Hiles argument; Pet'rs Ex. 1 (both parcels).*

13. The Petitioners argue that by removing the negative influence factors, assessment “standards” were not followed. Therefore, the errors are objective rather than subjective. *Hiles argument.*

RESPONDENT’S CONTENTIONS

14. The Petitioners are utilizing Form 133s to argue “subjective issues.” Because no “objective errors” are present, the appeals have been filed “erroneously.” *Newsome argument.*

ANALYSIS

15. The Petitioners seek to correct alleged errors in the 2011 assessments via Form 133 petitions, which the Department of Local Government Finance (DLGF) has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12.² But only objective errors that can be corrected with exactness and precision can be addressed with a Form 133. These forms are not for changes that require subjective judgment. Ind. Code § 6-1.1-15-12; *O’Neal Steel v. Vanderburgh Co. Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003); *Barth Inc. v. State Bd. of Tax Comm’rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Bender v. State Bd. of Tax Comm’rs*, 676 N.E.2d at 1114 (Ind. Tax Ct. 1997); *Reams v. State Bd. of Tax Comm’rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. of Tax Comm’rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).
16. A determination is objective if it hinges on simple, true or false findings of fact. *See Bender*, 676 N.E.2d at 1115. “[W]here a simple finding of fact does not dictate the result

² Additionally, the Petitioners cannot avoid the statutory time limitations associated with the Form 131 review process by filing their claim on a Form 133. *See Williams Indus. v. State Bd. of Tax Comm’rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (stating that because the legislature has created specific appeal procedures, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner). *See also Lake County Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1236-37 (Ind. 2005) (stating that because the taxpayer failed to challenge its assessments within the applicable time period for which a Form 130 was available, it was foreclosed from using a Form 133 for that purpose).

or discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.*

17. Subjective judgment is required to apply influence factors. Individual parcels within a neighborhood may have peculiar conditions that are not reflected in the base rate of the land. Assessors use influence factors to account for how those conditions affect an individual parcel’s value. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch.2 at 43. Because it is directly tied to the determination of value, the estimation of the appropriate influence factor percentage, if any, is subjective. As to the Petitioners’ claim that state law or standard requires an objective application of a negative influence factor if certain conditions apply, the case law is clear that influence factors are not appealable under a Form 133.

SUMMARY OF FINAL DETERMINATION

18. The Board finds for the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.